

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP M. CAVANAGH,

Plaintiff-Appellant,

v

WAYNE COUNTY ELECTION COMMISSION,
WAYNE COUNTY BOARD OF CANVASSERS,
and CATHY M. GARRETT, in her official
capacity as Wayne County Clerk,

Defendants-Appellees,

and

WARREN C. EVANS,

Intervening Defendant-Appellee.

UNPUBLISHED

July 31, 2014

No. 322892

Wayne Circuit Court

LC No. 14-009568-AW

Before: MURRAY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff Philip M. Cavanagh has filed an appeal of right from the final order of the trial court dismissing his challenge, filed July 25, 2014, to the qualifications of Intervening Defendant Warren C. Evans to be a candidate for Wayne County Executive on the August 5, 2014 primary ballot. Plaintiff requested an expedited decision on his appeal, a request with which Evans has concurred. Both that request, as well as the motion for immediate consideration, have been granted.¹

One of several problems to this challenge, as the trial court held, is that the complaint was filed less than 28 days prior to the primary, so a rebuttable statutory presumption exists that

¹ See *Cavanagh v Wayne Co Election Comm*, unpublished order of the Court of Appeals, entered July 31, 2014 (Docket No. 322892).

laches² bars the challenge. MCL 691.1031. Plaintiff's sole explanation for bringing this action so close to the actual election – that *he* did not know the alleged facts about Evan's residency until late July – is insufficient to overcome this important statutory presumption, particularly in light of the fact that Evan's Affidavit of Identity stating Evan's residence address was filed on April 21, 2014. The trial court did not clearly err in holding that plaintiff's challenge was barred by laches. *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 252; 704 NW2d 117 (2005).

Affirmed.

/s/ Christopher M. Murray
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood

² Laches is an equitable remedy that generally precludes a party from asserting a right when the delay in bringing the action causes prejudice to an opposing party. *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 252; 704 NW2d 117 (2005).